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ABSTRACT

The Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention was initiated in the Spring of 1975 by the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice. The efforts of this task force resulted in nine reports, each one dealing with one aspect of the Juvenile Justice System. This particular volume explores a number of closely related issues regarding the appropriate scope of the juvenile or family court's jurisdiction over delinquency cases. (Author/PC)

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**A COMPARATIVE
ANALYSIS OF
STANDARDS AND
STATE PRACTICES**

JURISDICTION--DELINQUENCY

VOLUME IV OF IX

U.S. DEPARTMENT OF HEALTH
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

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National Institute for Juvenile Justice and Delinquency Prevention

Office of Juvenile Justice and Delinquency Prevention

Law Enforcement Assistance Administration

U.S. Department of Justice

**A COMPARATIVE ANALYSIS OF
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VOLUME IV OF IX

Working Papers of the National Task Force
to Develop Standards and Goals for Juvenile
Justice and Delinquency Prevention

Prepared under Grant Number 75-TA-99-0016 from the
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PREFACE TO WORKING PAPERS

Task Force Origin and Mission

The National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention was initiated as part of Phase II of the standards and goals effort undertaken by the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice.

The original portion of this effort (Phase I) led to the establishment of the National Advisory Commission on Criminal Justice Standards and Goals in October of 1971. To support the work of the National Advisory Commission, special purpose Task Forces were created, each concentrating on a separate area of concern in criminal justice. The efforts of the Task Forces resulted in the completion of five reports: Courts; Police; Corrections; Criminal Justice System; and Community Crime Prevention. In addition, the National Advisory Commission itself produced an overview volume entitled A National Strategy to Reduce Crime. Following the completion of these works in 1973, the National Advisory Commission was disbanded.

In the Spring of 1975, LEAA established five more Task Forces coordinated by a newly created National Advisory Committee to carry out the work of Phase II. The five Task Forces were Private Security; Organized Crime; Civil Disorders and Terrorism; Research and Development; and, of course, the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention.

From the beginning there was a recognition that the work of the Juvenile Justice and Delinquency Prevention Task Force was much broader than the other four groups. The charge of the Juvenile Justice Task Force was to supplement virtually all of the work of the Phase I National Advisory Commission with a "juvenile" version of the original adult-oriented standards and goals statements.

In all, the Task Force met ten times, for two or three days each time, in public meetings in various parts of the nation. At these meetings the Task Force was able to solidify its group philosophy, analyze the issues of importance in juvenile justice and delinquency prevention, direct the writing of standards and commentaries, review and modify draft material, and react to National Advisory Committee recommendations. The final results of the Task Force's efforts are set forth in the forthcoming volume on Juvenile Justice and Delinquency Prevention, soon to be published by LEAA.

Throughout its work process, the Task Force had the benefit of staff assistance. The American Justice Institute (AJI) of Sacramento, California, received a grant from LEAA to support the work of the Task Force.

Task Force Working Procedures and Use of Comparative Analyses

The time and resources provided to accomplish the challenging task of producing the standards volume did not allow the Task Force to conduct new research in juvenile justice and delinquency prevention. However, the Task Force did utilize a methodology which assured the incorporation of the best scholarship and state-of-the-art knowledge currently available.

This methodology involved identifying the major issues or questions which needed to be resolved before the Task Force could promulgate standards. Comparative Analyses were then constructed around each of these issues. Each Comparative Analysis begins with a comparison of the positions taken on the issue by other standard-setting organizations--previous Task Forces, Commissions, etc. The Comparative Analyses also consider the current practice of each state with regard to the issue in question.

These background materials were designed not only to make Task Force members aware of the various positions that had been taken with regard to a particular issue, but also to provide the Task Force with a complete analysis of the arguments for and against the full range of options presented.

Using the Comparative Analyses as a basis for its discussion and deliberation, the Task Force then directed the staff and consultants to prepare standards and commentaries in line with the positions which it took in each of these areas. This process proved to be very productive for the Task Force members. It allowed informed consideration of the pertinent issues prior to the adoption of any particular standard.

Compilation of Working Papers

Following completion of the Task Force's work, it was clear to members of the AJI staff and officials at LEAA that the Comparative Analyses prepared to assist the Task Force in its preparation of the standards volume could be useful to other groups. In particular, it was recognized that states and localities which plan to formulate standards or guidelines for juvenile justice and delinquency prevention will need to traverse much of the same territory and address many of these same questions. As a result, LEAA's National Institute for Juvenile Justice and Delinquency Prevention provided the AJI staff with a grant to compile the materials in their present form.

The Comparative Analyses have been organized in a series of nine volumes of Working Papers, each devoted to a particular aspect of juvenile justice and delinquency prevention. (A complete table of contents of each of the volumes is set forth in the appendix.) Some subjects have been analyzed in considerable detail; others, because of limited time or consultant resources, have been given abbreviated treatment. Thus, while it is recognized that these Working Papers do not present a comprehensive examination of all of the important issues in juvenile justice--or even of all of the issues considered by the Task Force--they do represent a useful survey of a wide range of subjects, with a wealth of data on many of the particulars. Using these materials as groundwork, other groups with interests in individual facets of the juvenile system may wish to expand the research as they see fit.

Although the Comparative Analyses should not be taken to represent the Task Force's views--they were prepared by project consultants or research staff and were not formally approved by the Task Force or reviewed by the National Advisory Committee--it was decided that it would be helpful to outline the position taken by the Task Force on each of the issues. Therefore, the AJI staff reviewed each of the Comparative Analyses and added a concluding section on "Task Force Standards and Rationale" which did not appear in the materials when they were considered by the Task Force.

A more thorough exposition of the Task Force's views can be found in the forthcoming volume on Juvenile Justice and Delinquency Prevention, which should, of course, be consulted by those considering these Working Papers.

The efforts of the many consultants and research assistants who prepared the drafts of these materials is gratefully acknowledged. Any errors or omissions are the responsibility of the American Justice Institute, which reviewed the materials and assembled them in their present form.

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FOREWORD

Over the past ten years, a number of national efforts have developed regarding juvenile justice and delinquency prevention standards and model legislation. After the enactment of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415) and in conjunction with LEAA's Standards and Goals Program, many States started formulating their own standards or revising their juvenile codes.

The review of existing recommendations and practices is an important element of standards and legislative development. The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) has supported the compilation of the comparative analyses prepared as working papers for the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention in order to facilitate this review. Over one hundred issues, questions, and theories pertaining to the organization, operation, and underlying assumptions of juvenile justice and delinquency prevention are covered in the analyses. These are divided into nine volumes: Preventing Delinquency; Police-Juvenile Operations; Court Structure; Judicial and Non-Judicial Personnel and Juvenile Records; Jurisdiction-Delinquency; Jurisdiction-Status Offenses; Abuse and Neglect; Pre-Adjudication and Adjudication Processes; Prosecution and Defense; and Juvenile Dispositions and Corrections.

The materials discussed in these reports reflect a variety of views on and approaches to major questions in the juvenile justice field. It should be clearly recognized in reviewing these volumes that the conclusions contained in the comparative analyses are those of the Task Force and/or its consultants and staff. The conclusions are not necessarily those of the Department of Justice, LEAA, or NIJJDP. Neither are the conclusions necessarily consistent with the recommendations of the Advisory Committee on Standards that was established by the Act, although the Committee carefully considered the comparative analyses and endorsed many of the positions adopted by the Task Force.

Juvenile justice policies and practices have experienced significant changes since the creation of the first juvenile court in 1899. The perspective provided by these working papers can contribute significantly to current efforts to strengthen and improve juvenile justice throughout the United States.

James C. Howell
Director
National Institute for Juvenile Justice
and Delinquency Prevention
January, 1977

INTRODUCTION

Volume IV: Jurisdiction--Delinquency

This volume contains a series of eight Comparative Analyses which explore a number of closely related issues regarding the appropriate scope of the juvenile or family court's jurisdiction over delinquency cases. The first Comparative Analysis addresses the threshold question of how "delinquency" should be defined.

Once the definitional question has been resolved, a number of questions arise as to what age range should be considered under this type of jurisdiction. Therefore, the next four Comparative Analyses all discuss issues related to age. The first two consider the minimum and maximum ages to which adjudicatory jurisdiction should attach. The next Comparative Analysis addresses the corollary issue of the relevant point of inquiry about the juvenile's age; should age be determined at the time of the commission of the offense, the time of the juvenile's apprehension or when the juvenile is adjudicated? The topic of the appropriate duration of juvenile court jurisdiction is examined in the last of the four Comparative Analyses focusing on age-related issues.

Closely related to the subject of the proper age range for delinquency jurisdiction is the issue of waiver: whether--and, if so, upon what criteria--the court should be authorized to waive its jurisdiction over certain cases falling within the specified age range and transfer them to the adult criminal courts. This is the subject of the next Comparative Analysis.

The last two papers in this volume focus on venue statutes and traffic offenses. The first outlines the options available in determining where a juvenile should be tried. The last sets forth the arguments for and against including any or all traffic offenses within the jurisdiction of the juvenile court.

The materials in this volume were originally prepared by Mr. Peter Sandmann, Esq., of the Youth Law Center in San Francisco, whose assistance is gratefully acknowledged. The papers were subsequently revised and assembled in their present form by the staff of the American Justice Institute, which bears responsibility for any errors or omissions.

1. Issue Title: Definition of Delinquency

2. Description of the Issue:

A definition of juvenile delinquency is necessary in defining juvenile court jurisdiction. Each state must attempt to specifically define what it means by the term juvenile delinquency.

3. Summary of State Practices:

There are 39 states which use the term "delinquent" in identifying behavior subject to juvenile court jurisdiction. Twelve other states use such terms as "ward," "offender," or "children." Most state codes provide that juvenile courts may exercise jurisdiction over any juvenile who commits a criminal offense, regardless of the nature or seriousness of the criminal offense. Most model acts have similar provisions. Nevertheless, there are a number of offenses which are technically "criminal," but which may be considered inappropriate for the automatic authorization of juvenile court jurisdiction. An offense such as "jaywalking" may, for example, be considered too petty to authorize the exercise of the court's delinquency jurisdiction. In this regard, the Texas Family Code (§51.03) attempts a refinement of the definition of delinquent behavior by taking violations of a misdemeanor grade, punishable only by fines, out of the delinquent category and placing them in an "in need of supervision" category.

All 51 juvenile codes also bring within the purview of the juvenile court conduct that is illegal only because of the child's age ("status offenses"). In 26 states, as indicated below, status violators are classified as delinquents and are not differentiated from those who have violated adult criminal codes. Twenty-five states have separate categories for status offenders ("incorrigible children" "unruly children," etc.), and 18 of these states place restrictions on the disposition alternatives for status offenders.

<u>Practice</u>	<u># of States</u>	<u>States by Name</u>
Use term such as "ward" or "offender"	12	AK, CA, HI, ID, KY, ME, MO, MS, NV, OR, VI, VA
Use "delinquent" term	39	All others

<u>Practice</u>	<u># of States</u>	<u>States by Name</u>
No separate classification for "status Offenses"	26	AL, AK, CT, ID, IN, IA, KY, LA, ME, MI, MN, MO, MS, MT, NV, NH, NJ, NM, OR, PA, SC, TX, VT, VA, WV
Separate classification and Restrictions on Disposition Alternatives	18	AK, CA, CO, DC, FL, GA, HI, IL, MD, NB, NY, NC, ND, OH, SD, TN, VT, WA

4. Summary of Positions Recommended by Standards Groups:

All model acts suggest that the definition of delinquency be related to the adult criminal code. However, the Institute for Judicial Administration/American Bar Association (IJA/ABA) Juvenile Justice Standards Project recommends that certain adult offenses not be included under juvenile court jurisdiction; i.e., (1) acquisition, possession or use of narcotics, marijuana, or alcohol; (2) acquisition or possession of pornographic materials; (3) consensual sexual behavior; and (4) gambling. They also recommend that juvenile court jurisdiction should be authorized only over crimes for which a prison sentence is possible, if committed by an adult.

5. Analysis of the Issue:

State codes generally provide that juveniles who commit acts which violate federal, state or local criminal laws are subject to the jurisdiction of the juvenile court. Distinctions are not normally made between misdemeanors and felonies, between crimes punishable by prison sentences and crimes punishable only by fines or forfeitures, or between violations of the criminal code and violations of regulatory statutes to which criminal penalties are attached.

A single violation of the criminal laws is usually sufficient to authorize juvenile court jurisdiction. However, a few courts have held that "a single violation of the law ... by a minor does not always permit concluding that the transgressor is a juvenile delinquent."¹ Such a conclusion may be more readily expected in situations in which an offense committed by the juvenile is a violation of a regulatory statute, or the like, rather than in cases in which a violation of the state's criminal code has occurred.

The fact that juvenile codes do not normally distinguish between various types of criminal offenses for purposes of juvenile court jurisdiction seems to be the result less of a calculated decision than of the fact that there has been relatively little discussion of this issue in the model acts. However, the recent recommendations drafted by the IJA/ABA Juvenile Justice Standards Project do address this issue at length.² Under these standards, it is recommended juvenile court jurisdiction be authorized only over crimes which appear in the federal, state or local criminal code, thereby removing jurisdiction over violations of regulatory statutes which contain criminal sanctions. Furthermore, crimes for which no prison sentence is authorized are not included under the juvenile court's jurisdiction. "Offenses so lightly regarded by the law ought not yield criminal liability, and the stigma and condemnation such liability entails, in juvenile court."³

They also recommend removing certain "victimless crimes" from the authority of the juvenile court. This recommendation, however, appears to follow from a belief that "victimless crimes" are philosophically suspect, rather than from a simple desire to effectively define juvenile court jurisdiction. In recommending the elimination of "victimless crimes," careful distinction was drawn between the jurisdiction of the juvenile court over behavior which is viewed as criminal, and juvenile court jurisdiction which is found in other statutory authority, such as in dependency and neglect provisions.

As a final point, such defenses as mental incapacity or immaturity should also be considered along with the criminal offense in jurisdictional issues. The inability or incapacity of a juvenile to comprehend that his or her behavior constitutes an offense may be an appropriate reason to preclude the juvenile court from exercising delinquency jurisdiction.

6. Task Force Standards and Rationale:

The Task Force decided upon the following definition of delinquency:

Standard 9.1 Family court delinquency jurisdiction should be exercised only for acts which would be violations of federal or state criminal law or local ordinance if committed by adults.

The Task Force felt that proceedings involving "status offenses" should not be grounded on the same philosophy or employ the same procedures as delinquency cases; therefore, it excluded them from the definition. (The Task Force position on those cases is set forth in Chapter 10 on Families with Service Needs.)

The commentary to Standard 9.1 suggests that individual states may wish to further refine this definition by, for example, excluding violations of regulatory statutes which contain criminal sanctions.

Footnotes:

¹Krell v. Sanders, 168 Neb. 458, 464, 96 N.W. 2d, 218, 222 (1959); Jones v. Commonwealth, 185 Va. 335, 343, 38 S.E. 2d 444, 447 (1946).

²Junker, John H., IJA/ABA Juvenile Justice Standards Project, Tentative Standards Draft, Juvenile Crime, March 1974.

³Ibid.

1. Issue Title: Minimum Age--Should the jurisdiction of juvenile courts be limited only to those defendants over a specific age?

2. Description of the Issue:

Children who are quite young can be expected to lack the understanding to be charged with the commission of crimes even if they engage in conduct which would otherwise be criminal. The creation of a minimum age provision for juvenile court jurisdiction will provide a specific standard for courts to apply in determining criminal responsibility for young children.

3. Summary of State Practices:

<u>Minimum Age for Juvenile Court Jurisdiction for Criminal Offenses¹</u>	<u># of States</u>	<u>States by Name</u>
Age 7	2	MA, NY
Age 10	4	CO, MS, TX, VT
Either common law presumption of 7 or no specification	45	All others

4. Summary of Recommendations by Standards Groups:

Minimum age has been given little consideration by standards groups in defining juvenile court jurisdiction. Apparently, the only formal recommendation on this issue is that of the 1976 Tentative Draft of the Institute for Judicial Administration/American Bar Association (IJA/ABA) Juvenile Justice Standards, which recommends a minimum age of 10.

5. Analysis of the Issue:

The common law presumption is that children under age 7 are not sufficiently mature to understand the consequences of their behavior and cannot, therefore, be charged with crime.² There are, in fact, few offenses reported as committed by those 7 years old or younger.³ However, the question of emotional and physical maturity at age 7 is open to debate. For example, at a 1974 meeting sponsored by the IJA/ABA Juvenile Justice Standards Project,

a group of psychiatrists, psychologists, and other professionals were unable to reach a consensus regarding the minimum age at which young people can be considered responsible for their actions.⁴

The infrequent nature of offenses by young children has led some to conclude that minimum age provisions are not necessary.⁵ To emphasize the point, it has been suggested that advocates of minimum age provisions are more concerned with statutory precision than with the practical impact of such provisions. On the other hand, young children do commit crimes on occasion,⁶ and when they do, juvenile courts, without the benefit of statutes, must make case-by-case decisions.

If minimum age provisions are established, consideration should also be given to the juvenile court dependency and neglect provisions. Regardless of the degree of competency or responsibility of a child, certain behavior may indicate the need for juvenile court intervention. If minimum age provisions limit juvenile court jurisdiction, dependency and neglect provisions may allow the only opportunity for court intervention in some cases. With or without the establishment of a minimum age provision, consideration should also be given to allowing such defenses as "immaturity," "incompetency," "insanity," and the like. This was the approach initially taken by the IJA/ABA Juvenile Justice Standards Project which, in lieu of recommending a minimum age, at first recommended that such defenses be specifically authorized for young persons in juvenile court delinquency adjudications.⁷ However, that Project subsequently revised its position on the efficacy of a general minimum age requirement and now recommends a minimum age of 10.⁸

6. Task Force Standards and Rationale:

The Task Force focused on minimum age for delinquency jurisdiction in Standard 9.2.

The minimum age for exercise of family court delinquency jurisdiction over a juvenile who is charged with delinquent conduct should be 10 years of age.

The Task Force felt that children too immature to understand that they were engaging in conduct which violated the law ought not be tried as delinquents. After reviewing the relevant research, it selected age 10 as a "best guess" criterion for gauging the relevant level of (im)maturity and providing uniform guidance for decision-makers.

Standard 10.8 from the Task Force's chapter on Families with Service Needs is also relevant to this issue.

The Families with Service Needs jurisdiction should include jurisdiction over juveniles under 10 who commit repeated "delinquent acts" or a "delinquent act" of a serious nature.

This standard was included because the Task Force felt that unusual cases might arise involving either serious or repeated law violations where judicial intervention would be appropriate even for very young children. The Task Force concluded that the family-centered proceedings outlined in its Families with Service Needs proposal (see Chapter 10) offered a better forum for handling these cases than delinquency proceedings.

Footnotes:

¹U.S. Department of Justice, LEAA National Criminal Justice Information and Statistic Service, Children in Custody (1971). Levin, Mark and Sarri, Rosemary. Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States, National Assessment of Juvenile Corrections, University of Michigan (1974).

²Fox, The Law of Juvenile Courts in a Nutshell, (West, 1971), pp. 15, 20.

³Law Enforcement Assistance Administration, Sourcebook of Criminal Justice Statistics, 1973, p. 268.
The only available statistics are arrest statistics rather than conviction rates. However, of all reported arrests, children 10 and under represented only 1.2 percent of those arrested, while children 11 and 12 (combined) represented 2.1 percent; and children 13 and 14 (combined) represented 6.2 percent. Furthermore, of all arrests for violent crime, children 10 and under represented only .6 percent of the arrests.

⁴Institute of Judicial Administration/American Bar Association Juvenile Justice Standards Project, Summary of Symposium on Moral Development and Juvenile Justice (undated preliminary report).

⁵Fox, The Law of Juvenile Courts in a Nutshell, (West, 1971), p. 18.

⁶Ibid.

⁷See Institute for Judicial Administration/American Bar Association Overview of Juvenile Justice Standards Project, April 1975, p. 19.

⁸See IJA/ABA Juvenile Justice Standards Project, Standards Relating to Juvenile Delinquency and Sanctions §2.1 (Tentative Draft 1976).

1. Issue Title: Maximum Age--At what age should jurisdiction transfer to adult criminal courts?

2. Description of the Issue:

The special treatment options available to the juvenile court may be counterproductive when applied to an individual sufficiently mature to warrant treatment as an adult. Given this assumption, maximum age for juvenile court jurisdiction becomes an important issue. Even so, the maximum age provisions in state statutes are essentially arbitrary. States need to critically evaluate their current practice with respect to such provisions.

3. Summary of State Practices:

A majority of state statutes (N=36) provide for juvenile court jurisdiction until age 18, although several states (N=5) limit jurisdiction of the juvenile court to those under 16 years of age, and nine states limit original jurisdiction to those under 17 years of age. Several states have a different maximum age for young offenders depending upon the crime involved. Typically in the latter instance, the juvenile court has jurisdiction up to age 16 in cases involving serious offenses, and up to age 18 for all other charges. The practice of all states with regard to the maximum age for juvenile court jurisdiction is shown below.¹ It should be noted that statutory provisions in all states are accompanied by virtually no commentary or statements of rationale.

<u>Maximum Age</u>	<u># of States</u>	<u>States by Name</u>
Up to 16	5	AL, CT, NY, VT, NC
Up to 17	9	FL, GA, IL, LA, ME, MA, MI, MS, TX
Up to 18	37	All Others

4. Summary of Positions Recommended by Standards Groups:

Most standards groups have accepted the traditional practice of limiting juvenile court jurisdiction to those under 18 years of age. The Children's Bureau of the Department of Health, Education and Welfare has suggested that "successful experience in these (juvenile) courts over many years has established the soundness of this age level of jurisdiction."² The International Association of Chiefs of Police has also recommended age 18,³ although in all of the recommendations suggesting a maximum age of 18, there is typically little commentary and there are few statements of rationale. The IJA/ABA Tentative Draft sets an age limit of 17.

<u>Standards Groups</u>	<u>Policy Recommendation</u>
NCCD Standard Act (1959)	Under 18/lowered to 16 in 1973 draft
Uniform Juvenile Court Act (1968)	Under 18/between 18 & 21 with transfers from court of jurisdiction
HEW Model Act (1974)	Under 13
IJA/ABA Tentative Draft (1976)	Under 17 at time of offense/under 20 at initiation of court proceedings

5. Analysis of the Issue:

Judged by the lack of commentary or statements of rationale associated with state statutes and recommendations by standards groups, it can be assumed that the establishment of a maximum age provision for juvenile court jurisdiction is an essentially arbitrary decision. More than likely, however, the establishment of a maximum age reflects society's notion of the process of maturation. The maximum age of 18 found in most state statutes corresponds to the point in time when young persons complete their secondary education and begin to break ties with the family unit. The younger maximum age of 16 in some states may result, in part, from the belief that contemporary young persons have a sense of responsibility at age 16.

Sol Rubin, former NCCD General Counsel, has taken this position explaining that age 16 corresponds with the maturity and sense of responsibility of contemporary young persons. In his view, the law should do its utmost to encourage self-reliance and responsibility in the growth process and to scrupulously avoid defeating these ends through misguided paternalism. He is skeptical that reducing the maximum age from 18 to 16 would result in more punitive treatment of young persons who will, as a result, be handled by the adult criminal courts, and he doubts that any increase in juvenile crime will result. Rubin also suggests that the juvenile court can more effectively provide rehabilitative treatment because of the smaller number of juveniles coming before the court when the maximum age for jurisdiction is 16.⁴

Albeit, the most significant factor affecting a lowered age for juvenile court jurisdiction is probably the existence of "youthful offender" acts in some states,⁵ and under federal law.⁶ These acts provide an intermediate sentencing option which falls somewhere between juvenile court and adult court jurisdiction. Nowhere, however, is the rationale behind a particular maximum age for juvenile court jurisdiction explicitly specified.

The rationale behind the practice of varying the maximum age with the offense type is also unclear.⁷ Ostensibly, the practice results from the belief that rehabilitative treatment options may not be available to the juvenile court in serious cases, or from a desire to insure that the most serious offenders receive the most serious consequences. Regardless of the rationale, the practice of varying the maximum age with offense type raises an additional probable cause issue; i.e., should juveniles qualifying by age remain under juvenile court jurisdiction until probable cause has been established?

Given the arbitrary nature of maximum age provisions in various state statutes, it might be argued that jurisdiction should be determined after professional input regarding the maturity of individual defendants. Unfortunately, professional opinions vary, which leads to the counter argument that, in the absence of a precise scientific approach, the setting of an arbitrary cutoff point based on chronological age is the best policy. Whatever policy is adopted, the difficulty inherent in defining maturity suggests the need for a certain amount of flexibility in a maximum age rule. This flexibility can occur in the form of (1) the existence of "youthful offender" acts as a sentencing option for adult criminal courts, (2) the ability of juvenile courts to transfer ("waive") young persons under their jurisdiction to adult courts, and (3) the availability of meaningful rehabilitative treatment options for the use of the juvenile court in handling more serious offenders.

6. Task Force Standards and Rationale:

The Task Force addressed the issue of maximum age for delinquency jurisdiction in Standard 9.3, which specifies that,

The family court should have adjudicative jurisdiction over a juvenile only until the juvenile reaches the age of 18.

The commentary to this Standard indicates,

The family court is designed to respond to the needs of young persons who have not achieved full maturity. For that reason, the maximum age for family court jurisdiction should be consistent with the maturation process of adolescents.

The Task Force recognized that any uniform maximum age provision must be somewhat arbitrary. But it felt that the advantages of a rule-oriented approach outweigh the difficulties inherent in a general policy of individualized assessment. Moreover, the Task Force believed that the limited evidence available does indicate an approximate correlation between reaching the age of 18 and the attainment of "adult maturity."

To provide flexibility in serious cases, the Task Force also outlined specific criteria for waiver of jurisdiction and transfer to the criminal courts in cases of juveniles 16 or over (see Standard 9.5 and Delinquency Jurisdiction Comparative Analysis VI).

Footnotes:

¹Davis, Samuel, Rights of Juveniles: The Juvenile Justice System, Clark Boardman Publishing Co. (1974). Information current as of 1/1/74.

²U.S. Department of Health, Education and Welfare, Welfare Administration, Children's Bureau, Standards for Juvenile and Family Courts, Washington, D.C., U.S. Government Printing Office (1966), p. 36.

³Kobetz and Bosarge, Professional Standards Division, International Association of Chiefs of Police, Juvenile Justice Administration, Gaithersburg, Md. (1973), p. 18.

⁴Rubin, Sol. A Model Juvenile Court Statute, unpublished, (1973), p. 13.

⁵Consolidated Laws of New York, Criminal Procedure Law §720.10 et. seq. (McKinney, 1975).

⁶18 U.S.C. §5005, et. seq. (1969).

⁷See, e.g., Del. Code Ann., Title 10 §938 (1974); Pa. Stat. Ann., Title 11 §§256, 260 (West, 1965). Procedures regarding initiation of adult criminal proceedings in these cases vary from state to state. A probable cause hearing is usually required in the juvenile or criminal court before commencement of the adult criminal proceeding regarding a person who, but for the offense charged, would be entitled to juvenile court proceedings. Murder is the crime most often so included.

1. Issue Title: Age At Which Jurisdiction Attaches--Should juvenile court jurisdiction be determined by the age of the juvenile at the time the offense occurred, when the youth is arrested, or at some other point in time?

2. Description of the Issue:

If it is assumed that juvenile court jurisdiction should depend on the age of the defendant, the question arises regarding the point in time at which age is considered. For example, a young person may qualify for juvenile court jurisdiction at the time of the offense, but not at the time of arrest or at the time of adjudication. Conversely, a juvenile may be under a minimum age requirement when an offense is committed, but he may qualify for juvenile court jurisdiction at the time of arrest or court hearing. Establishing either maximum or minimum age provisions necessitates resolution of this issue.

3. Summary of State Practices:

All states currently make a jurisdiction determination based either on the juvenile's age when the offense occurs, or on his age when first detained for the offense. The breakdown by state is provided below:

<u>Date at Which Determination Is Made</u>	<u># of States</u>	<u>States by Name</u>
Date of Offense	37	AL, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MA, MI, MN, MO, MT, NV, NH, NM, NY, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WY
Date of Detention	14	AD, AZ, AR, CT, DE, ME, MD, MS, NB, NJ, NC, OR, WA, WI

4. Summary of Recommendations by Standards Groups:

Available sources² are unanimous on this issue. In each case they conclude that a juvenile who commits an offense prior to reaching the maximum age for juvenile court jurisdiction, but who

is not apprehended or prosecuted until after that date, ought to be processed through the juvenile court, barring a subsequent transfer or waiver.

5. Analysis of the Issue:

State codes are divided on the issue of whether juvenile court jurisdiction attaches at the time of the offense or at the time of apprehension or adjudication. Most model acts, however, provide that jurisdiction attaches at the time of the offense. There is relatively little discussion among commentators regarding the rationale for either approach, although two main arguments are relevant. First, it could be held that if the youth's level of maturity and sense of responsibility were such that treatment as an adult would have been inappropriate at the time of the offense, the case should be judged by the same standards even though apprehension occurred after an increase in maturity level.³ Second, and to the contrary, it could be argued that juvenile courts are designed to offer rehabilitative treatment for those not mature enough to profit from adult treatment options. The specialized rehabilitative program of the juvenile court may be inappropriate for older individuals.⁴

Current provisions regarding the date at which jurisdiction attaches apply only to maximum age statutes, primarily due to the fact that few states have minimum age requirements. A different rationale may apply in the case of juveniles who commit an offense prior to the minimum age for juvenile court jurisdiction, but who are apprehended after such age. The offense may indicate a need for rehabilitative intervention which the juvenile court should be free to apply even though the offense occurred prior to the minimum age. Furthermore, the argument that juvenile court rehabilitation options are inappropriate for individuals outside of given age categories loses relevance when considering provisions related to a minimum age requirement.

6. Related Issue: Mistake of Age:

If a young person is apprehended, but does not disclose that his age is below the maximum age for juvenile court jurisdiction, it may occur that the actual age of the young person will not be discovered until after conviction in adult court. For such cases, one model act has provided: "If at the time of the alleged offense, the defendant charged was under 18 years, but this fact is not discovered by the adult court until after entry of judgment of conviction and order of sentence, the court may elect to retain jurisdiction and permit the conviction and sentence to stand or dispose of the case under juvenile court dispositional procedures."⁵ In most states, this issue is not addressed in the juvenile court law, but is handled by court decision.⁶

7. Task Force Standards and Rationale:

The Task Force's Standard 9.4 addresses the issue of the time at which jurisdiction should attach as follows:

Subject to any applicable statute of limitations, the jurisdiction of the family court should be determined by the age of the juvenile at the time of the delinquent act and not by the juvenile's age at the time of apprehension or adjudication.

This approach concurs with that recommended by all past standards-setting group which have spoken to the issue and rejects the date-of-detention criteria employed by a minority of states. The Task Force felt the date-of-detention criterion was ill-advised because it vests law enforcement officials with discretion unintended by the statutes since they might delay apprehension and therefore "transfer" the case to the adult criminal court without family court review.

Footnotes:

¹Levin, Mark and Sarri, Rosemary. Juvenile Delinquent: A Comparative Analysis of Legal Codes in the United States National Assessment of Juvenile Corrections, University of Michigan (1975), p. 14.

²HEW 1974 Model Act, Whitebread, Charles. Institute for Judicial Administration/American Bar Association, Tentative Standards Draft, Waiver of Juvenile Court Jurisdiction, Uniform Act 1968, and Standard Act 1959.

³This is especially true if the juvenile court has the option of transferring the case to an adult criminal court if the young person appears inappropriate for juvenile court jurisdiction.

⁴It should be remembered, however, that juvenile courts currently maintain jurisdiction long after the maximum age in some cases.

⁵U.S. Department of Health, Education & Welfare, Office of Youth Development, Model Acts for Family Courts and State-Local Children's Programs, §8(b), (1974).

⁶See, e.g., Hemphill v. Johnson, 287 N.E. 2d 828 (Ohio App. 1972); State v. Buchanan, 489 P. 2d 744 (Wash. 1971).

1. Issue Title: Duration of Jurisdiction--What is the appropriate duration of Juvenile Court jurisdiction?

2. Description of the Issue:

Each state must decide if the juvenile court should have continued jurisdiction beyond the age established as the maximum age for original jurisdiction; and if so, how long continuing jurisdiction may last. Additionally, states must decide what the maximum length of jurisdiction by the juvenile court should be irrespective of the age of a youth at the time of disposition.

3. Summary of State Practices:

The majority of the states (N=41) have established age 21 as the maximum age for continuing jurisdiction, although a few states specify a younger age. As indicated below, 3 states maintain unlimited juvenile court jurisdiction in the case of serious offenses:

<u>Maximum Age for Continuing Jurisdiction¹</u>	<u># of States</u>	<u>States by Name</u>
Up to 17	1	CT
Up to 18	3	MI, NY, VT
Up to 19	0	--
Up to 20	3	ME, MS, NB
Up to 21	41	AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KN, KY, LA, MD, MA, MN, MO, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VT, VA, WA, WV, WI
Unlimited jurisdiction for serious offenses like homicide and rape	3	MT, SC, NJ

4. Summary of Recommendations by Standards Groups:

Standards groups differ in their recommendations regarding the issue. The 1968 Uniform Act suggested that jurisdiction should be limited to two years beyond the date of adjudication. Other standards

Groups suggest that duration of jurisdiction should be limited by the age of the individual in question, with the specific maximum age suggested varying between standards groups. The Institute for Judicial Administration/American Bar Association Juvenile Justice Standards Project has recommended a somewhat more complex provision.

Position of Standards Groups

HEW 1974 Model Act	Until 19 "unless terminated prior thereto."
IJA/ABA 1975 Rec.	Until 18 if disposition order entered before age 15. Up to three years for orders entered between age 15 and 18.
Uniform Act 1968	Two-year maximum, but renewable.
Standard Act 1959	Until 21 "unless terminated prior thereto" or convicted of an adult criminal offense.

5. Analysis of the Issue:

Juvenile court jurisdiction, once attached, has traditionally extended until age 21, implying that the juvenile court treatment is inappropriate for a person who has reached the age of majority. A current trend toward lowering the age of majority may mean some re-thinking of this position. The practice of extending the duration of juvenile court jurisdiction beyond the maximum age for adjudicatory jurisdiction reflects a concern that juveniles assigned to a rehabilitative program shortly before the maximum age will not be automatically released from the program after such age. If it were not possible to continue disposition orders beyond the maximum age, there would be pressure on the juvenile court to transfer large numbers of juveniles who are approaching the maximum age to the adult courts, which may or may not be in the best interest of those involved, depending on the maturity of the juveniles in question, and on the treatment options available through both courts.

Some observers believe continuing the juvenile court disposition jurisdiction beyond the maximum age for adjudicatory jurisdiction has at least two disadvantages: (1) as long as juvenile court jurisdiction continues, individuals under its jurisdiction may be denied their full rights as adults; and (2) juveniles adjudicated at an early age can be subject to an exceptionally lengthy jurisdiction by the juvenile court.

These problems have been addressed in a variety of fashions. Four states, e.g., Vermont, actually limit juvenile court dispositional jurisdiction to the same maximum age that is established for adjudicatory jurisdiction.² Other states, e.g., New York,³ and some other authorities,⁴ provide that the duration of a juvenile court's dis-

position jurisdiction can extend only for a certain period of time, such as two or three years.

In resolving some of the conflicting concerns indicated above, the IJA/ABA Juvenile Justice Standards Project has proposed a somewhat more complex provision.⁵ Juvenile court jurisdiction over disposition orders would be permitted to extend only until age 18 if such orders were entered more than three years before the juvenile's eighteenth birthday. Disposition orders subsequent to a juvenile's fifteenth birthday would be permitted to extend for a maximum of three years with no authority to renew disposition orders beyond the three-year maximum. This proposed standard also makes explicit the authority of the juvenile court to modify a disposition order within the appropriate time limits; and it further specifies that a juvenile who has passed the maximum age may not be adjudicated in juvenile court for a new offense, even though the juvenile is still subject to a juvenile court's dispositional order.

6. Related Issue: Statute of Limitations:

It may occur that some young persons who have committed offenses are not apprehended until years after the offense was committed. In such cases, juvenile court jurisdiction may be far less appropriate than in cases where the young person is apprehended shortly after the offense has been committed. For such cases, the IJA/ABA Juvenile Justice Standards Project has tentatively recommended⁶ the establishment of a three-year statute of limitations for offenses which have been committed by young persons at an age during which the juvenile court would have had jurisdiction. This statute of limitations would not apply to specific offenses for which there is no established statute of limitations under state law for adult offenders. Furthermore, the statute of limitations is not intended to preclude adult criminal court jurisdiction over young persons who are transferred by the juvenile court--utilizing appropriate standards--even if the statute of limitations has expired.

7. Task Force Standards and Rationale :

The Task Force's position of the issue of duration of dispositional authority is embodied in Standard 14.2.

The family court dispositional authority over a juvenile who has been adjudicated a delinquent should not exceed the juvenile's twenty-first birthday.

The standards also recommend establishing different classes of juvenile offenses for dispositional purposes, based on the seriousness of the misconduct. In addition, they outline limitations on the

duration of dispositions for each of the recommended classes (see Standards 14.13 and 14.14).

The Task Force felt that this approach would facilitate the attainment of the court's objectives of rehabilitation and treatment in cases where the juvenile was near the age of 18 when adjudicated. In addition, it felt that these standards would avert pressures for wholesale transfers of older juveniles to the adult courts, while at the same time insuring that jurisdiction is not unnecessarily retained to the point that juveniles are denied their full rights as adults.

The statute of limitations issue is noted in the Task Force's Standard 9.4 on the time at which adjudicatory jurisdiction attaches (see Delinquency Jurisdiction Comparative Analysis IV). But the Task Force did not recommend a general time limit for such statutes.

Footnotes:

¹Levin, M. and Sarri, R. Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States 15 (National Assessment of Juvenile Corrections, University of Michigan, 1974).

²Vermont; Vt. Stat. Ann. Title XXI, sec. 173; Title 33, sec. 632(a)(1), 633(a), 634.

³New York; N.Y. Family Ct. Act, sec. 758.

⁴E.g., National Conference of Commissioners on Uniform State Laws, Uniform Juvenile Court Act (1968).

⁵IJA/ABA Juvenile Justice Standards Project, "Summary of Symposium on Moral Development and Juvenile Justice" (preliminary report--no date).

⁶IJA/ABA Juvenile Justice Standards Project, "Overview of Juvenile Justice Standards Project, Interim Report" 19 (1975).

1. Issue Title: Waiver--Under what circumstances, if any, should the juvenile court waive its jurisdiction over a juvenile offender and direct that he be tried in adult criminal court?

2. Description of the Issue:

Waiver and transfer provisions in a sense raise the same theoretical questions confronted in the determination of maximum age. There is a definite reluctance among legislatures and authorities alike to draw the borders between juvenile court and criminal court jurisdiction with rigid permanence. Waiver provisions reflect, on the one hand, a concern that a juvenile court with absolutely exclusive jurisdiction over a certain age group will be burdened with cases of juveniles it cannot possibly serve, either because of their own peculiar needs or those of the community; and, on the other hand, there is concern that a too broadly drawn transfer provision will generate discrimination or will compromise the fundamental concept of the juvenile court and the rights of youth.

3. Summary of State Practices:

All but two states (New York and Vermont) allow a jurisdiction waiver by the juvenile court. Waiver or transfer authorization, where allowed, is typically subject to certain restrictions. For example, many states have a minimum age provision.¹

<u>Minimum Age Required</u>	<u># of States</u>	<u>States by Name</u>
16	13	CA, DE, HI, ID, KS, MT, NB, NV, NJ, ND, OR, RI, WI,
15	11	AL, CT, DC, GA, IN, LA, MS, MN, OH, TX, VA
14	7	CO, FL, IA, MO, NM, NC, VT, MS, IL
13	2	MS, IL
No Waiver	2	NY, VT
Only for Limited Offenses	3	PA, MA, TN
No Minimum	13	All Others

<u>In Terms of Other Restrictions</u>	<u># of States</u>	<u>States by Name</u>
Hearing Requested	27	AK, AR, CO, CN, DE, DC, FL, GA, HI, ID, IO, ME, MD, MN, MO, MI, NC, ND, OH, OK, SD, TN, TX, UT, VA, WV, WY
Investigation Only Required	18	AL, AK, CA, IN, KS, KY, MI, MS, NV, NH, NJ, NM, OR, PA, RI, SC, WA, WI
Probable Cause Finding Required	14	AL, CT, GA, KY, ME, MT, NC, ND, OH, OK, TN, TX, WV, WY
Prosecution Plays a Major Role	4	DC, IL, IA, MN
Juvenile Has an Option to Transfer	3	IL, NJ, FL

4. Summary of Positions Recommended by Standards Groups:

Most model acts recommend that waiver of juvenile court jurisdiction be subject to a hearing, that the youth must be at least sixteen years of age, and that he be charged with a felony. Major recommendations with regard to the issue are summarized below:

HEW 1974
Model Act Youth 16, charged with felony, or already under court commitment as delinquent, or 18-year-old charged with offense prior to becoming 18. Hearing required. Criteria: Prospect for rehabilitation before 19, offense, record, treatment record, available dispositions. Juvenile judge decides.

IJA/ABA
1975 Rec. Youth 16, charged with felony not amenable to treatment by juvenile judge upon hearing. Criteria: Probable cause that offense is equivalent to adult, Class I felony, prior record of adjudicated offenses involving serious bodily harm to others and prior ineffectual but appropriate placement required. Full procedural safeguards available including appeal and adjudication by different juvenile court judge if juvenile is retained in juvenile court.

Under consideration are provisions limiting prosecutor's power to request waiver and a youth's right to request an adult trial.

Uniform Juvenile Act 1968	Youth 16, upon hearing considering: Probable cause offense was committed, amenability to treatment, civil commitment potential, community interest.
Standard Act 1959	Youth 16, charged with felony, upon investigation and hearing by juvenile judge waived when retention is contrary to child's or public's best interest.

5. Analysis of the Issue:

Most states² and virtually all model acts³ place exclusive original jurisdiction in the juvenile court over all criminal offenses committed by juveniles except traffic offenses. However, most commentators recommend, and most state codes permit, that juvenile courts may transfer ("waive") jurisdiction to the adult criminal courts in certain circumstances. This practice provides a vehicle for allowing the juvenile court to remove from its jurisdiction juveniles who are perceived to be completely inappropriate for the treatment options available through the juvenile court. At the same time, it does not result in the automatic exclusion of juveniles whose offenses are quite serious, but who might nevertheless benefit from the rehabilitative treatment resources available to the juvenile court. In the absence of this procedure, there would likely be pressure to reduce the maximum age for juvenile court delinquency jurisdiction.

Waiver authority is not universally advocated, however; two states (New York and Vermont) do not permit waiver at all, and the President's Commission on Law Enforcement and Administration of Justice Task Force: Juvenile Delinquency and Youth Crime has taken a rather dim view of the practice.⁴ The report states, "The substance behind the procedure remains unrecognized for what it really is; not a scientific evaluation, but a front for society's insistence on retribution or social protection." The report goes on to suggest that waiver according to certain offense categories is equally as arbitrary as is a rigid age delineation, and that longer juvenile sentences should be provided as an alternative so that the juvenile court can have full power to perform a protective function. The Commission recommended in conclusion that waiver is a "necessary evil" that should be subject to relatively stringent restrictions.

If states decide that "waiver" provisions are indeed necessary, then consideration must turn to the conditions under which waiver can take place. There are several subissues to consider:

The argument that transfer to the adult criminal courts is often not in the best interest of the juvenile has led most commentators to suggest restrictions on waiver authority. These restrictions are usually in terms of (a) the juvenile's age, (b) the offense committed, (c) amenability to juvenile court treatment options, and/or (d) what is in the best public interest.

The President's Commission on Law Enforcement and Administration of Justice concluded, for example, "a youth should be over a certain age, 16; the alleged offense should be relatively grave (the equivalent of a felony at least); his prior offense record should be of a certain seriousness; his treatment record discouraging."⁵

(a) Age

Thirty-six states have established a minimum age before waiver is possible, although there is little uniformity in the minimum age established. Most model acts suggest 16 as the minimum age for transfer, which has some research support,⁶ although the decision appears to be essentially arbitrary.

(b) Offense

A second common limitation on the transfer authority of the juvenile court concerns the nature of the offenses for which transfer will be permitted. Fourteen of the states which permit transfer require that the offense for which the juvenile has been charged be a felony.⁷ Most model acts also provide that transfer is appropriately permitted only in cases of felonies. This standard suggests that there is little reason to believe that a juvenile who has not committed a felony is so unamenable to rehabilitative treatment designed for juveniles that he cannot be appropriately handled by the juvenile court. However, the fact that a large number of state codes do not limit the transfer authority of juvenile courts to felonies indicates that a number of legislatures believe that juvenile courts should have broad discretion in making transfer decisions. As a related issue, there is virtually no support among commentators for completely excluding certain offenses from juvenile court jurisdiction solely because of their seriousness. The commission of a serious offense alone does not necessarily indicate that the juvenile would be inappropriate for the rehabilitation programs available through the juvenile court.

Any criteria for waiver which rests on commission of an alleged offense automatically raises the issue of whether a probable cause hearing will be required before waiver can take place. There is a need to establish probable cause that the juvenile did commit the alleged offense. Criteria based on offense also invite changes in charges by the prosecutor.

(c) Amenability to Treatment

Beyond the jurisdictional prerequisites to the juvenile court's transfer power is an issue which goes to the heart of the transfer decision: whether the juvenile is amenable to the rehabilitative treatment programs of the juvenile court. Of the thirty-six states which have established standards for the juvenile court's transfer authority, twenty-four provide that there must be a finding by the juvenile court to the effect that the juvenile is not amenable to

rehabilitative treatment designed for juveniles.⁸ In making this finding, a number of factors may be taken into consideration including the seriousness of the offense, the prior record of the juvenile and the effectiveness of prior attempts at providing rehabilitative treatment to the juvenile. Commentators suggest that concern about the probability of rehabilitation success focuses on the goal with which the juvenile court is principally charged.

(d) Public Protection

As an additional criterion defining transfer authority, twenty-seven states provide that the public interest should be considered by the juvenile court.⁹ The 1968 Uniform Juvenile Court Act also contains such a provision, which reflects a concern that the court protect public safety.¹⁰ These provisions have been attacked, however, by the Institute for Judicial Administration/American Bar Association.

As a final point, jurisdictional provisions governing transfer decisions are closely related to the procedures by which such decisions will be made. Obviously, if a prosecutor rather than the juvenile court is permitted to make the transfer decision, without a hearing, then considerations of such standards as amenability to treatment or public interest may be virtually meaningless due to the lack of established procedures by which such standards can be applied.

6. Task Force Standards and Rationale:

The Task Force's position on waiver and transfer is presented in Standard 9.5.

The family court should have the authority to waive jurisdiction and transfer a juvenile for trial in adult criminal court when:

1. The juvenile is charged with a delinquent act as defined in Standard 9.1.
2. The juvenile was 16 years or older at the time of the alleged commission of the delinquent act.
3. The alleged delinquent act is:
 - a. Aggravated or heinous in nature, or
 - b. Part of a pattern of repeated delinquent acts.
4. There is probable cause to believe the juvenile committed the acts which are to be the subject of the adult criminal proceedings if waiver and transfer is approved.

5. The juvenile is not amenable, by virtue of his maturity, criminal sophistication or past experience in the juvenile justice system, to services provided through the family court.
6. The juvenile has been given a waiver and transfer hearing which comports with due process including, but not limited to, the right to counsel and a decision rendered in accord with specific criteria promulgated by either the court or the legislature with the criteria of Kent v. United States, 383 U.S. 541 (1966) as a minimum.

The Task Force's position on waiver was similar to that of the President's Commission on Law Enforcement and the Administration of Justice. It felt that transfer procedures were necessary to remove those juveniles for whom handling by the family court is completely inappropriate. But it also recognized that these procedures may be subject to a number of abuses; hence, the rather detailed guidelines set forth above.

The commentary to the Standard emphasizes that amenability to the services available from the family court is "the key question" in any waiver proceeding. As noted in item 6 of the Standard, the Task Force viewed formalized criteria for the waiver decision as essential to avoid abuses. The commentary stresses that the criteria outlined in the appendix to Kent should serve as "minimum guides."

Footnotes:

¹Information on state statutes was taken from Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States, 1974, pp. 16-23.

²Twenty-eight states place exclusive original jurisdiction over juveniles in the Juvenile Court. The remaining states have a variety of provisions, excluding certain offenses or providing for concurrent jurisdiction between adult Criminal Courts and Juvenile Courts. Ibid.

³Included are the 1974 HEW Model Act, the Uniform Juvenile Court Act (1968), and the Standard Juvenile Court Act (1959).

⁴Task Force Report, Juvenile Delinquency and Youth Crime, 1967, p. 24.

⁵Ibid.

⁶Problem of Age and Jurisdiction in the Juvenile Court, 19 Vand. L. Rev. 833, (1966); Hays and Solway, The Role of Psychological Evaluation in Certification of Juveniles for Trial as Adults, 9 Houston L. Rev. 709 (1972).

⁷IJA/ABA Juvenile Justice Standards Project, C.H. Whitebread, Recommended Standards and Commentary on Waiver of Juvenile Court Jurisdiction, p. 52.

⁸Id., p. 53.

⁹Id., p. 54.

¹⁰Section 34.

1. Issue Title: Location--Where should a juvenile be tried: in the county of his residence, where the offense was committed, or where he was apprehended?

2. Description of the Issue:

Although there are exceptions in some states, the geographic jurisdiction of a juvenile court generally extends over only a county or other governmental subdivision. For juveniles who reside in the county in which they commit an offense, the local juvenile court is obviously the most appropriate court to exercise original jurisdiction over the juvenile. However, it may occur that a juvenile resides in one county, commits an offense in a second county and is apprehended in a third county. In such a case, three separate juvenile courts may have jurisdiction over the juvenile.

3. Summary of State Practices:

As indicated below, most states stipulate that adjudication take place in the county where the offense occurred, although judicial discretion is allowed in transferring the case to another juvenile court if a transfer is felt to be in the best interest of the juvenile. Relatively few states (six) have compulsory provisions, and these states are divided regarding where jurisdiction must apply. No state code requires adjudication in the county where the juvenile was apprehended if that county is different from the county of residence and the county where the offense occurred. Eight state codes do not specifically address the problem at all.

<u>Location of Juvenile¹ Hearing by Statute</u>	<u># of States</u>	<u>States by Name</u>
Residence of Juvenile Mandatory	3	DE, GA, OR
Residence of Juvenile for Serious Offenses Only	1	MT
County Where Offense Com- mitted Mandatory	2	FL, NC
County Where Offense Com- mitted: Judicial Discretion	28	AL, AZ, CA, CO, CT, HI, ID, IL, IA, KS, KY, LA, MD, MI, MN, NH, NY, ND, OH, OK, SD, TN, TX, UT, VT, VA, WI, WY
No Statutory Provision	8 37	AK, AR, DC, IN, MA, MS, NB, NJ

4. Summary of Positions Recommended by Standards Groups:

Model acts and standards groups are in general agreement that jurisdiction applies first to the county where the offense occurred, although a change of venue to the county of residence should be allowed where appropriate in order to provide a rehabilitation program in the juvenile's home environment.

HEW 1974 Model Act	"Proceedings ... shall be commenced in the county where the alleged delinquency occurred or they may, with the consent of the child, be commenced in the county where the child resides." Transfer permitted sua sponte by the court or by any party's motion.
IJA/ABA 1975 Rec.	Adjudication may not be based on conduct occurring in another state. Venue not addressed.
Uniform Act 1968	County of residence or site of offense appropriate. Transfer permitted sua sponte or by party's motion.
Standard Act 1959	If commenced at site of offense, transfer to county of residence permitted.

5. Analysis of the Issue:

It is usually assumed that rehabilitation is most effective if provided in the juvenile's home environment, although the availability of witnesses or other considerations may dictate that adjudication take place in the county where the offense occurred. In fact, only three states require adjudication in the county of residence, while one additional state requires that serious offenses be adjudicated in the county of residence.

The desirability of providing rehabilitative treatment for juveniles in their home environment has been a significant guiding principle in many disposition decisions.² Considering this factor, the state must decide if the authorization for the juvenile court in the county of residence to exercise jurisdiction should be preserved. There are instances, however, when mandatory adjudication in the county of residence may not be appropriate. For example, the juvenile on the advice of counsel may feel that the availability of witnesses or other considerations dictate that the adjudication take place in the county where the offense allegedly occurred. Perhaps for this reason the 1974 HEW Model Act provides that the proceedings may be transferred from the county where the offense allegedly occurred to the county of residence only with the consent of the juvenile.³ Other model acts assume that the juvenile court which sits where the offense allegedly occurred will initially exercise jurisdiction, and that the court of original jurisdiction may permit transfer to the county of residence.⁴

An additional complication is provided by the fact that juveniles may commit offenses outside of the state in which they reside. In such circumstances, the Interstate Compact on juveniles, in which all states participate, permits the juvenile to be returned to the state of residence for enforcement of an order of disposition entered by the juvenile court having jurisdiction over the offense. Some states go further, however, and permit juvenile court jurisdiction over adjudications for conduct which occurred in another state.⁵ Proposed standards drafted for the Institute for Judicial Administration/American Bar Association Justice Standards Project would preclude such a possibility on the grounds that forcing a juvenile to defend an adjudication in a jurisdiction which is not even within the state where the alleged offense occurred may be unfair to the juvenile, and may also violate the Sixth Amendment's requirement that a defendant be tried in the jurisdiction "wherein the crime shall have been committed." Their proposed standard would, however, permit extradition of a juvenile in cases authorized by law and it would apparently permit transfer of the juvenile to the state of residence for disposition after adjudication.

6. Task Force Standards and Rationale:

The Task Force spoke to the issue of the location where the juvenile should be adjudicated in Standard 9.6.

The family court which has jurisdiction within the city, county or other political subdivision where the delinquent act was allegedly committed should be the court which adjudicates the act, unless, on the motion of the juvenile, the prosecution or its own motion, the court decides to transfer the case to the jurisdiction of the juvenile's residence.

The Task Force believed that such factors as the availability of witnesses and the policy considerations underlying the Sixth Amendment indicate that venue should initially attach where the law violation occurs. Recognizing that the court's rehabilitative purposes may, however, in some cases best be served by adjudication at the place of residence, the Task Force authorized such transfers.

The Task Force considered and rejected restricting motion to transfer to the juvenile. The commentary to the Standard indicates,

It is expected ... that in acting on any such motion the court will exercise its discretion to avoid undue hardship to either the prosecution or the defense during the adjudication.

Footnotes:

¹See Juvenile Delinquency: A Comparative Analysis of Legal Codes in the U.S., by Mark Levin and Rosemary Sarri, National Assessment of Juvenile Corrections, p. 24.

²More than 40 state juvenile codes provide that rehabilitation of the juvenile, preferably in his own home, is their goal. National Assessment of Juvenile Corrections, Juvenile Delinquency, a Comparative Analysis of Legal Codes in the United States, 1974, at 24.

³U.S. Department of Health, Education and Welfare, Model Acts for Family Courts and State-Local Children's Programs, 1974, Section 11, at 19.

⁴See, e.g., Uniform Juvenile Court Act, §12, 1968.

⁵See, e.g., Iowa Code Ann §232.2 (13).

1. Issue Title: Traffic Offenses--Should any or all traffic offenses be tried in the juvenile court?

2. Issue Description:

Juvenile court jurisdiction regarding traffic matters is an important issue in at least three respects. First, the extensive volume of traffic offenses results in an administrative burden on the responsible court. Secondly, the ability of the justice system to reduce the probability of future traffic offenses may depend in part on the approach taken by the court, which can vary depending on whether the court is specifically oriented toward the problems of juveniles or adults. Third, attitudes of young people can be affected toward the justice system by their experience with it. Many juveniles come before the courts only on traffic matters.

3. Summary of State Practices:

Most states (N=33) distinguish between various types of offenses, leaving minor traffic offenses to be handled by traffic courts while more serious traffic offenses are handled in the juvenile court. The remaining 18 states place jurisdiction of all traffic matters involving juveniles exclusively in the juvenile court.¹

4. Summary of Positions Recommended by Standards Groups

Standards groups have taken various positions regarding the court of jurisdiction for juvenile traffic matters. Basic positions are presented below:

HEW 1974 Model Act	"Traffic offenses shall not be considered delinquent acts."
IJA/ABA 1975 Rec.	Recommends juvenile court jurisdiction for serious traffic offenses, i.e., vehicular homicide, hit and run driving, reckless driving, and driving under the influence of alcohol, narcotics, or dangerous drugs; but traffic court jurisdiction is recommended for all other offenses. Also recommends that traffic offenses be handled by the juvenile court if the juvenile in question is less than 13 years of age.
Uniform Act 1968	Serious traffic offenses jurisdiction of juvenile court, all others jurisdiction of traffic court.
Standard Act 1959	All traffic offenses jurisdiction of juvenile court.

5. Analysis of the Issue:

In 1959, the National Council on Crime and Delinquency Standard Juvenile Court Act recommended that all juvenile traffic offenses be handled by the juvenile court. The rationale was apparently that the same factors which suggest the need for juvenile court jurisdiction with respect to criminal offenses committed by juveniles apply equally to traffic offenses. By this argument, the juvenile court is in the best position to apply an appropriate judgment and treatment option to juveniles guilty of any type of misbehavior.

In 1969, the NCCD reversed its policy and recommended that minor traffic offenses committed by juveniles be handled by the traffic courts established for adults. This is essentially the position taken by the President's Commission on Law Enforcement and Administration of Justice.² Professor Sanford Fox declared in 1971 that there was a trend to remove juvenile traffic offenses from the juvenile court,³ and the 1968 Uniform Juvenile Court Act⁴ and the 1974 HEW Model Act⁵ support that conclusion. Three primary arguments for this position are: (1) juveniles who are licensed to drive should be handled originally by adult traffic courts since such juveniles are exercising an adult privilege; (2) releasing juvenile courts from the administrative burden of handling all traffic matters allows concentration of resources on more serious problems; and (3) minor traffic offenses are not evidence of "delinquency" and of a need for rehabilitative treatment to the same extent as are more serious criminal offenses. Hence, to handle minor traffic offenses in the same fashion as serious offenses are handled would be inappropriate.

Of course, the last two considerations may not be appropriate in relation to more serious traffic offenses. Serious offenses, e.g., vehicular homicide, or hit and run driving, may be considered evidence of sufficient "delinquency" to warrant juvenile court jurisdiction. In addition, the volume of serious traffic offenses is typically not large enough to create an administrative burden on the juvenile court. For these reasons, the 1968 Uniform Juvenile Court Act provides that juvenile courts have jurisdiction over serious traffic offenses committed by juveniles, as does the Institute for Judicial Administration/American Bar Association (IJA/ABA) Juvenile Justice Standards Project. The proposed IJA/ABA standard adds another consideration to its recommendation. They suggest that traffic offenses committed by juveniles who are less than 13 years of age at the time of the offense be handled by the juvenile court and that it might be appropriate to consider the minimum driving age in a state as the age at which the juvenile court jurisdiction over minor traffic offenses ceases and adult traffic court jurisdiction begins.

Proponents advocating retention of traffic matters in the juvenile court point out the often mechanical and insensitive nature of traffic court and the danger that a juvenile might generalize a negative impression to the entire legal system. They doubt that a traffic court will ever be equipped to impose sensitive and constructive dispositions in cases of juvenile traffic offenders. Further, they cite that driving involves other than driving skills including proper safety practices, familiarity with traffic laws and, most important, general attitude while operating a motor vehicle. The specialized treatment provided by the juvenile court system affords the opportunity to deal individually with each juvenile, pointing out the seriousness of the violation and, in some instances, to revoke the driving privilege for a distinct period of time.

6. Task Force Standards and Rationale:

The Task Force focused on traffic offenses in Standard 9.7, which states,

The family court's jurisdiction over traffic offenses should be limited to:

1. Traffic offenses committed by juveniles who are not old enough to be licensed to drive.
2. Major traffic offenses committed by all juveniles. These offenses should include vehicular homicide, hit and run driving and driving under the influence of alcohol or drugs.

All other traffic offenses committed by juveniles should be handled by the adult traffic court.

The commentary to this Standard follows quite closely the arguments set forth in favor of this position in the preceding section of this comparative analysis.

Footnotes:

¹These states by name are: Alabama, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Minnesota, Nevada, North Carolina, Ohio, Pennsylvania, South Carolina, Utah, Washington and Wyoming.

²President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 1967, p. 24.

³Fox, The Law of Juvenile Courts in a Nutshell, (West, 1971), p. 53.

⁴Uniform Juvenile Court Act, Sec. 44.

⁵HEW Model Act, Sec. 2(7).

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